

HOUSE No. 914

By Mr. Loscocco of Holliston, petition of Paul J.P. Loscocco for legislation to amend the Uniform Trust Code. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT MAKING AMENDMENTS TO THE GENERAL LAWS COVERING TRUSTS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The General Laws are hereby amended by renum-
2 bering chapter 203 as chapter 203E, and inserting in place thereof,
3 as chapter 203, the following chapter:—

UNIFORM TRUST CODE.

ARTICLE 1.

GENERAL PROVISIONS AND DEFINITIONS.

7 Section 101. SHORT TITLE. This act may be cited as the Uni-
8 form Trust Code.

9 Section 102. SCOPE. This chapter applies to express trusts,
10 charitable or noncharitable, and trusts created pursuant to a
11 statute, judgment, or decree that requires the trust to be adminis-
12 tered in the manner of an express trust.

13 Section 103. DEFINITIONS. In this chapter:

14 (1) “Action” with respect to an act of a trustee, includes a
15 failure to act.

16 (2) “Beneficiary” means a person that:

17 (A) has a present or future beneficial interest in a trust, vested
18 or contingent; or

19 (B) in a capacity other than that of trustee, holds a power of
20 appointment over trust property.

21 (3) “Charitable trust” means a trust, or portion of a trust, cre-
22 ated for a charitable purpose described in Section 405(a).

23 (4) “Conservator” means a person appointed by the court to
24 administer the estate of a minor or adult individual.

25 (5) “Environmental law” means a federal, state, or local law,
26 rule, regulation, or ordinance relating to protection of the environ-
27 ment.

28 (6) “Guardian” means a person appointed by the court to make
29 decisions regarding the support, care, education, health, and wel-
30 fare of a minor or adult individual. The term does not include a
31 guardian ad litem.

32 (7) “Interests of the beneficiaries” means the beneficial inter-
33 ests provided in the terms of the trust.

34 (8) “Jurisdiction,” with respect to a geographic area, includes a
35 State or country.

36 (9) “Person” means an individual, corporation, business trust,
37 estate, trust, partnership, limited liability company, association,
38 joint venture, government; governmental subdivision, agency, or
39 instrumentality; public corporation, or any other legal or commer-
40 cial entity.

41 (10) “Personal representative” means an executor, an adminis-
42 trator, and any other fiduciary in charge of administering the
43 estate.

44 (11) “Power of withdrawal” means a presently exercisable
45 general power of appointment other than a power exercisable only
46 upon consent of the trustee or a person holding an adverse
47 interest.

48 (12) “Property” means anything that may be the subject of
49 ownership, whether real or personal, legal or equitable, or any
50 interest therein.

51 (13) “Qualified beneficiary” means a beneficiary who, on the
52 date the beneficiary’s qualification is determined:

53 (A) is a distributee or permissible distributee of trust income or
54 principal;

55 (B) would be a distributee or permissible distributee of trust
56 income or principal if the interests of the distributees described in
57 subparagraph (A) terminated on that date; or

58 (C) would be a distributee or permissible distributee of trust
59 income or principal if the trust terminated on that date.

60 (14) “Revocable” as applied to a trust, means revocable by the
61 settlor without the consent of the trustee or a person holding an
62 adverse interest.

63 (15) “Settlor” means a person, including a testator, who creates,
64 or contributes property to, a trust. If more than one person creates
65 or contributes property to a trust, each person is a settlor of the
66 portion of the trust property attributable to that person’s contribu-
67 tion except to the extent another person has the power to revoke or
68 withdraw that portion.

69 (16) “Spendthrift provision” means a term of a trust which
70 restrains both voluntary and involuntary transfer of a beneficiary’s
71 interest.

72 (17) “State” means a State of the United States, the District of
73 Columbia, Puerto Rico, the United States Virgin Islands, or any
74 territory or insular possession subject to the jurisdiction of the
75 United States. The term includes an Indian tribe or band recog-
76 nized by federal law or formally acknowledged by a State.

77 (18) “Terms of a trust” means the manifestation of the settlor’s
78 intent regarding a trust’s provisions as expressed in the trust
79 instrument or as may be established by other evidence that would
80 be admissible in a judicial proceeding.

81 (19) “Trust instrument” means an instrument executed by the
82 settlor that contains terms of the trust, including any amendments
83 thereto.

84 (20) “Trustee” includes an original, additional, and successor
85 trustee, and a co-trustee.

86 Section 104. KNOWLEDGE.

87 (a) Subject to subsection (b), a person has knowledge of a fact
88 if the person:

89 (1) has actual knowledge of it;

90 (2) has received a notice or notification of it; or

91 (3) from all the facts and circumstances known to the person at
92 the time in question, has reason to know it.

93 (b) An organization that conducts activities through employees
94 has notice or knowledge of a fact involving a trust only from the
95 time the information was received by an employee having respon-
96 sibility to act for the trust, or would have been brought to the
97 employee’s attention if the organization had exercised reasonable
98 diligence. An organization exercises reasonable diligence if it
99 maintains reasonable routines for communicating significant
100 information to the employee having responsibility to act for the
101 trust and there is reasonable compliance with the routines. Rea-

102 sonable diligence does not require an employee of the organiza-
103 tion to communicate information unless the communication is part
104 of the individual's regular duties or the individual knows a matter
105 involving the trust would be materially affected by the informa-
106 tion.

107 Section 105. DEFAULT AND MANDATORY RULES.

108 (a) Except as otherwise provided in the terms of the trust, this
109 chapter governs the duties and powers of a trustee, relations
110 among trustees, and the rights and interests of a beneficiary.

111 (b) The terms of a trust prevail over any provision of this
112 chapter except:

113 (1) the requirements for creating a trust;

114 (2) the duty of a trustee to act in good faith and in accordance
115 with the purposes of the trust;

116 (3) the requirement that a trust and its terms be for the benefit
117 of its beneficiaries, and that the trust have a purpose that is lawful,
118 not contrary to public policy, and possible to achieve;

119 (4) the power of the court to modify or terminate a trust under
120 Sections 410 through 416;

121 (5) the effect of a spendthrift provision and the rights of certain
122 creditors and assignees to reach a trust as provided in Article 5;

123 (6) the power of the court under Section 702 to require, dis-
124 pense with, or modify or terminate a bond;

125 (7) the power of the court under Section 708(b) to adjust a
126 trustee's compensation specified in the terms of the trust which is
127 unreasonably low or high;

128 (8) except for a qualified beneficiary who has attained 25 years
129 of age, the duty under Section 813(b)(2) and (3) to notify quali-
130 fied beneficiaries of an irrevocable trust of the existence of the
131 trust, of the identity of the trustee, and of their right to request
132 trustee's reports;

133 (9) the duty under Section 813(a) to respond to the request of a
134 beneficiary of an irrevocable trust for trustee's reports and other
135 information reasonably related to the administration of a trust;

136 (10) the effect of an exculpatory term under Section 1008;

137 (11) the rights under Sections 1010 through 1013 of a person
138 other than a trustee or beneficiary;

139 (12) periods of limitation for commencing a judicial pro-
140 ceeding;

141 (13) the power of the court to take such action and exercise
142 such jurisdiction as may be necessary in the interests of justice;
143 and

144 (14) the venue for commencing a proceeding as provided in
145 Section 204.

146 Section 106. COMMON LAW OF TRUSTS; PRINCIPLES OF
147 EQUITY. The common law of trusts and principles of equity sup-
148 plement this chapter, except to the extent modified by this chapter
149 or another statute of this commonwealth.

150 Section 107. GOVERNING LAW. The meaning and effect of
151 the terms of a trust are determined by:

152 (1) the law of the jurisdiction designated in the terms unless the
153 designation of that jurisdiction's law is contrary to a strong public
154 policy of the jurisdiction having the most significant relationship
155 to the matter at issue; or

156 (2) in the absence of a controlling designation in the terms of
157 the trust, the law of the jurisdiction having the most significant
158 relationship to the matter at issue.

159 Section 108. PRINCIPAL PLACE OF ADMINISTRATION.

160 (a) Without precluding other means for establishing a sufficient
161 connection with the designated jurisdiction, terms of a trust desig-
162 nating the principal place of administration are valid and control-
163 ling if:

164 (1) a trustee's principal place of business is located in or a
165 trustee is a resident of the designated jurisdiction; or

166 (2) all or part of the administration occurs in the designated
167 jurisdiction.

168 (b) A trustee is under a continuing duty to administer the trust
169 at a place appropriate to its purposes, its administration, and the
170 interests of the beneficiaries.

171 (c) Without precluding the right of the court to order, approve,
172 or disapprove a transfer, the trustee, in furtherance of the duty pre-
173 scribed by subsection (b), may transfer the trust's principal place
174 of administration to another State or to a jurisdiction outside of
175 the United States.

176 (d) The trustee shall notify the qualified beneficiaries of a pro-
177 posed transfer of a trust's principal place of administration not
178 less than 60 days before initiating the transfer. The notice of pro-
179 posed transfer must include:

180 (1) the name of the jurisdiction to which the principal place of
181 administration is to be transferred;

182 (2) the address and telephone number at the new location at
183 which the trustee can be contacted;

184 (3) an explanation of the reasons for the proposed transfer;

185 (4) the date on which the proposed transfer is anticipated to
186 occur; and

187 (5) the date, not less than 60 days after the giving of the notice,
188 by which the qualified beneficiary must notify the trustee of an
189 objection to the proposed transfer.

190 (e) The authority of a trustee under this section to transfer a
191 trust's principal place of administration terminates if a qualified
192 beneficiary notifies the trustee of an objection to the proposed
193 transfer on or before the date specified in the notice.

194 (f) In connection with a transfer of the trust's principal place of
195 administration, the trustee may transfer some or all of the trust
196 property to a successor trustee designated in the terms of the trust
197 or appointed pursuant to Section 704.

198 Section 109. METHODS AND WAIVER OF NOTICE.

199 (a) Notice to a person under this chapter or the sending of a
200 document to a person under this chapter must be accomplished in
201 a manner reasonably suitable under the circumstances and likely
202 to result in receipt of the notice or document. Permissible methods
203 of notice or for sending a document include first-class mail, per-
204 sonal delivery, delivery to the person's last known place of resi-
205 dence or place of business, or a properly directed electronic
206 message.

207 (b) Notice otherwise required under this chapter or a document
208 otherwise required to be sent under this chapter need not be pro-
209 vided to a person whose identity or location is unknown to and not
210 reasonably ascertainable by the trustee.

211 (c) Notice under this chapter or the sending of a document
212 under this chapter may be waived by the person to be notified or
213 sent the document.

214 (d) Notice of a judicial proceeding must be given as provided in
215 the applicable rules of civil procedure.

216 Section 110. OTHERS TREATED AS QUALIFIED BENEFI-
217 CIARIES.

218 (a) Whenever notice to qualified beneficiaries of a trust is
219 required under this chapter, the trustee must also give notice to
220 any other beneficiary who has sent the trustee a request for notice.

221 (b) A charitable organization expressly designated to receive
222 distributions under the terms of a charitable trust or a person
223 appointed to enforce a trust created for the care of an animal or
224 another noncharitable purpose as provided in Section 408 or 409
225 has the rights of a qualified beneficiary under this chapter.

226 (c) The attorney general of this commonwealth has the rights of
227 a qualified beneficiary with respect to a charitable trust having its
228 principal place of administration in this commonwealth.

229 Section 111. NONJUDICIAL SETTLEMENT AGREEMENTS.

230 (a) For purposes of this section, “interested persons” means
231 persons whose consent would be required in order to achieve a
232 binding settlement were the settlement to be approved by the
233 court.

234 (b) Except as otherwise provided in subsection (c), interested
235 persons may enter into a binding nonjudicial settlement agreement
236 with respect to any matter involving a trust.

237 (c) A nonjudicial settlement agreement is valid only to the
238 extent it does not violate a material purpose of the trust and
239 includes terms and conditions that could be properly approved by
240 the court under this chapter or other applicable law.

241 (d) Matters that may be resolved by a nonjudicial settlement
242 agreement include:

243 (1) the interpretation or construction of the terms of the trust;

244 (2) the approval of a trustee’s report or accounting;

245 (3) direction to a trustee to refrain from performing a particular
246 act or the grant to a trustee of any necessary or desirable power;

247 (4) the resignation or appointment of a trustee and the determi-
248 nation of a trustee’s compensation;

249 (5) transfer of a trust’s principal place of administration; and

250 (6) liability of a trustee for an action relating to the trust.

251 (e) Any interested person may request the court to approve a
252 nonjudicial settlement agreement, to determine whether the repre-
253 sentation as provided in Article 3 was adequate, and to determine
254 whether the agreement contains terms and conditions the court
255 could have properly approved.

256 Section 112. RULES OF CONSTRUCTION. The rules of con-
257 struction that apply in this commonwealth to the interpretation of
258 and disposition of property will also apply as appropriate to the
259 interpretation of the terms of a trust and the disposition of the trust
260 property.

261 **ARTICLE 2.**
262 **JUDICIAL PROCEEDINGS.**

263 Section 201. ROLE OF COURT IN ADMINISTRATION OF
264 TRUST.

265 (a) The court may intervene in the administration of a trust to
266 the extent its jurisdiction is invoked by an interested person or as
267 provided by law.

268 (b) A trust is not subject to continuing judicial supervision
269 unless ordered by the court.

270 (c) A judicial proceeding involving a trust may relate to any
271 matter involving the trust's administration, including a request for
272 instructions and an action to declare rights.

273 Section 202. JURISDICTION OVER TRUSTEE AND BENE-
274 FICIARY.

275 (a) By accepting the trusteeship of a trust having its principal
276 place of administration in this commonwealth or by moving the
277 principal place of administration to this commonwealth, the
278 trustee submits personally to the jurisdiction of the courts of this
279 commonwealth regarding any matter involving the trust.

280 (b) With respect to their interests in the trust, the beneficiaries
281 of a trust having its principal place of administration in this com-
282 monwealth are subject to the jurisdiction of the courts of this com-
283 monwealth regarding any matter involving the trust. By accepting
284 a distribution from such a trust, the recipient submits personally to
285 the jurisdiction of the courts of this commonwealth regarding any
286 matter involving the trust.

287 (c) This section does not preclude other methods of obtaining
288 jurisdiction over a trustee, beneficiary, or other person receiving
289 property from the trust.

290 Section 203. RESERVED.

291 Section 204. VENUE.

292 (a) Except as otherwise provided in subsection (b), venue for a
293 judicial proceeding involving a trust is in the county of this com-

294 monwealth in which the trust's principal place of administration is
295 or will be located and, if the trust is created by will and the estate
296 is not yet closed, in the county in which the decedent's estate is
297 being administered.

298 (b) If a trust has no trustee, venue for a judicial proceeding for
299 the appointment of a trustee is in a county of this commonwealth
300 in which a beneficiary resides, in a county in which any trust
301 property is located, and if the trust is created by will, in the county
302 in which the decedent's estate was or is being administered.

303

ARTICLE 3.

304

REPRESENTATION.

305 Section 301. REPRESENTATION: BASIC EFFECT.

306 (a) Notice to a person who may represent and bind another
307 person under this article has the same effect as if notice were
308 given directly to the other person.

309 (b) The consent of a person who may represent and bind
310 another person under this article is binding on the person repre-
311 sented unless the person represented objects to the representation
312 before the consent would otherwise have become effective.

313 (c) Except as otherwise provided in Sections 411 and 602, a
314 person who under this article may represent a settlor who lacks
315 capacity may receive notice and give a binding consent on the set-
316 tlor's behalf.

317 Section 302. REPRESENTATION BY HOLDER OF
318 GENERAL TESTAMENTARY POWER OF APPOINTMENT. To
319 the extent there is no conflict of interest between the holder of a
320 general testamentary power of appointment and the persons repre-
321 sented with respect to the particular question or dispute, the holder
322 may represent and bind persons whose interests, as permissible
323 appointees, takers in default, or otherwise, are subject to the
324 power.

325 Section 303. REPRESENTATION BY FIDUCIARIES AND
326 PARENTS. To the extent there is no conflict of interest between
327 the representative and the person represented or among those
328 being represented with respect to a particular question or dispute:

329 (1) a conservator may represent and bind the estate that the
330 conservator controls;

331 (2) a guardian may represent and bind the ward if a conservator
332 of the ward's estate has not been appointed;

333 (3) an agent having authority to act with respect to the partic-
334 ular question or dispute may represent and bind the principal;

335 (4) a trustee may represent and bind the beneficiaries of the
336 trust;

337 (5) a personal representative of a decedent's estate may repre-
338 sent and bind persons interested in the estate; and

339 (6) a parent may represent and bind the parent's minor or
340 unborn child if a conservator or guardian for the child has not
341 been appointed.

342 Section 304. REPRESENTATION BY PERSON HAVING
343 SUBSTANTIALLY IDENTICAL INTEREST. Unless otherwise
344 represented, a minor, incapacitated, or unborn individual, or a
345 person whose identity or location is unknown and not reasonably
346 ascertainable, may be represented by and bound by another having
347 a substantially identical interest with respect to the particular
348 question or dispute, but only to the extent there is no conflict of
349 interest between the representative and the person represented.

350 Section 305. APPOINTMENT OF REPRESENTATIVE.

351 (a) If the court determines that an interest is not represented
352 under this article, or that the otherwise available representation
353 might be inadequate, the court may appoint a representative to
354 receive notice, give consent, and otherwise represent, bind, and
355 act on behalf of a minor, incapacitated, or unborn individual, or a
356 person whose identity or location is unknown. A representative
357 may be appointed to represent several persons or interests.

358 (b) A representative may act on behalf of the individual repre-
359 sented with respect to any matter arising under this chapter,
360 whether or not a judicial proceeding concerning the trust is
361 pending.

362 (c) In making decisions, a representative may consider general
363 benefit accruing to the living members of the individual's family.

364 **ARTICLE 4.**
365 **CREATION, VALIDITY, MODIFICATION,**
366 **AND TERMINATION OF TRUST.**

367 Section 401. METHODS OF CREATING TRUST. A trust may
368 be created by:

369 (1) transfer of property to another person as trustee during the
370 settlor's lifetime or by will or other disposition taking effect upon
371 the settlor's death;

372 (2) declaration by the owner of property that the owner holds
373 identifiable property as trustee; or

374 (3) exercise of a power of appointment in favor of a trustee.

375 Section 402. REQUIREMENTS FOR CREATION.

376 (a) A trust is created only if:

377 (1) the settlor has capacity to create a trust;

378 (2) the settlor indicates an intention to create the trust;

379 (3) the trust has a definite beneficiary or is:

380 (A) a charitable trust;

381 (B) a trust for the care of an animal, as provided in Section 408;

382 or

383 (C) a trust for a noncharitable purpose, as provided in Section
384 409;

385 (4) the trustee has duties to perform; and

386 (5) the same person is not the sole trustee and sole beneficiary.

387 (b) A beneficiary is definite if the beneficiary can be ascer-
388 tained now or in the future, subject to any applicable rule against
389 perpetuities.

390 (c) A power in a trustee to select a beneficiary from an indefi-
391 nite class is valid. If the power is not exercised within a reason-
392 able time, the power fails and the property subject to the power
393 passes to the persons who would have taken the property had the
394 power not been conferred.

395 Section 403. TRUSTS CREATED IN OTHER JURISDIC-
396 TIONS. A trust not created by will is validly created if its creation
397 complies with the law of the jurisdiction in which the trust instru-
398 ment was executed, or the law of the jurisdiction in which, at the
399 time of creation:

400 (1) the settlor was domiciled, had a place of abode, or was a
401 national;

402 (2) a trustee was domiciled or had a place of business; or

403 (3) any trust property was located.

404 Section 404. TRUST PURPOSES. A trust may be created only
405 to the extent its purposes are lawful, not contrary to public policy,
406 and possible to achieve. A trust and its terms must be for the ben-
407 efit of its beneficiaries.

408 Section 405. CHARITABLE PURPOSES; ENFORCEMENT.

409 (a) A charitable trust may be created for the relief of poverty,
410 the advancement of education or religion, the promotion of health,
411 governmental or municipal purposes, or other purposes the
412 achievement of which is beneficial to the community.

413 (b) If the terms of a charitable trust do not indicate a particular
414 charitable purpose or beneficiary, the court may select one or
415 more charitable purposes or beneficiaries. The selection must be
416 consistent with the settlor's intention to the extent it can be ascer-
417 tained.

418 (c) The settlor of a charitable trust, among others, may maintain
419 a proceeding to enforce the trust.

420 Section 406. CREATION OF TRUST INDUCED BY FRAUD,
421 DURESS, OR UNDUE INFLUENCE. A trust is void to the extent
422 its creation was induced by fraud, duress, or undue influence.

423 Section 407. EVIDENCE OF ORAL TRUST.

424 (a) Except as otherwise provided in subsection (b), a trust need
425 not be evidenced by a trust instrument, but the creation of an oral
426 trust and its terms may be established only by clear and con-
427 vincing evidence.

428 (b) No trust concerning land, except such as may arise or result
429 by implication of law, shall be created or declared unless by a
430 written instrument signed by the party creating or declaring the
431 trust or by his attorney.

432 Section 408. TRUST FOR CARE OF ANIMAL.

433 (a) A trust may be created to provide for the care of an animal
434 alive during the settlor's lifetime. The trust terminates upon the
435 death of the animal or, if the trust was created to provide for the
436 care of more than one animal alive during the settlor's lifetime,
437 upon the death of the last surviving animal.

438 (b) A trust authorized by this section may be enforced by a
439 person appointed in the terms of the trust or, if no person is so
440 appointed, by a person appointed by the court. A person having an
441 interest in the welfare of the animal may request the court to
442 appoint a person to enforce the trust or to remove a person
443 appointed.

444 (c) Property of a trust authorized by this section may be applied
445 only to its intended use, except to the extent the court determines
446 that the value of the trust property exceeds the amount required

447 for the intended use. Except as otherwise provided in the terms of
448 the trust, property not required for the intended use must be dis-
449 tributed to the settlor, if then living, otherwise to the settlor's suc-
450 cessors in interest.

451 Section 409. NONCHARITABLE TRUST WITHOUT ASCER-
452 TAINABLE BENEFICIARY. Except as otherwise provided in
453 Section 408 or by another statute, the following rules apply:

454 (1) A trust may be created for a noncharitable purpose without
455 a definite or definitely ascertainable beneficiary or for a nonchari-
456 table but otherwise valid purpose to be selected by the trustee.
457 The trust may not be enforced for more than 21 years.

458 (2) A trust authorized by this section may be enforced by a
459 person appointed in the terms of the trust or, if no person is so
460 appointed, by a person appointed by the court.

461 (3) Property of a trust authorized by this section may be applied
462 only to its intended use, except to the extent the court determines
463 that the value of the trust property exceeds the amount required
464 for the intended use. Except as otherwise provided in the terms of
465 the trust, property not required for the intended use must be dis-
466 tributed to the settlor, if then living, otherwise to the settlor's suc-
467 cessors in interest.

468 Section 410. MODIFICATION OR TERMINATION OF
469 TRUST; PROCEEDINGS FOR APPROVAL OR DISAP-
470 PROVAL.

471 (a) In addition to the methods of termination prescribed by Sec-
472 tions 411 through 414, a trust terminates to the extent the trust is
473 revoked or expires pursuant to its terms, no purpose of the trust
474 remains to be achieved, or the purposes of the trust have become
475 unlawful, contrary to public policy, or impossible to achieve.

476 (b) A proceeding to approve or disapprove a proposed modifi-
477 cation or termination under Sections 411 through 416, or trust
478 combination or division under Section 417, may be commenced
479 by a trustee or beneficiary, and a proceeding to approve or disap-
480 prove a proposed modification or termination under Section 411
481 may be commenced by the settlor. The settlor of a charitable trust
482 may maintain a proceeding to modify the trust under Section 413.

483 Section 411. MODIFICATION OR TERMINATION OF NON-
484 CHARITABLE IRREVOCABLE TRUST BY CONSENT.

485 (a) A noncharitable irrevocable trust may be modified or termi-
486 nated upon consent of the settlor and all beneficiaries, even if the

487 modification or termination is inconsistent with a material purpose
488 of the trust. A settlor's power to consent to a trust's termination
489 may be exercised by an agent under a power of attorney only to
490 the extent expressly authorized by the power of attorney or the
491 terms of the trust; by the settlor's conservator with the approval of
492 the court supervising the conservatorship if an agent is not so
493 authorized; or by the settlor's guardian with the approval of the
494 court supervising the guardianship if an agent is not so authorized
495 and a conservator has not been appointed.

496 (b) A noncharitable irrevocable trust may be terminated upon
497 consent of all of the beneficiaries if the court concludes that con-
498 tinuance of the trust is not necessary to achieve any material pur-
499 pose of the trust. A noncharitable irrevocable trust may be
500 modified upon consent of all of the beneficiaries if the court con-
501 cludes that modification is not inconsistent with a material pur-
502 pose of the trust.

503 (c) A spendthrift provision in the terms of the trust is not pre-
504 sumed to constitute a material purpose of the trust.

505 (d) Upon termination of a trust under subsection (a) or (b), the
506 trustee shall distribute the trust property as agreed by the benefi-
507 ciaries.

508 (e) If not all of the beneficiaries consent to a proposed modifi-
509 cation or termination of the trust under subsection (a) or (b), the
510 modification or termination may be approved by the court if the
511 court is satisfied that:

512 (1) if all of the beneficiaries had consented, the trust could have
513 been modified or terminated under this section; and

514 (2) the interests of a beneficiary who does not consent will be
515 adequately protected.

516 Section 412. MODIFICATION OR TERMINATION
517 BECAUSE OF UNANTICIPATED CIRCUMSTANCES OR
518 INABILITY TO ADMINISTER TRUST EFFECTIVELY.

519 (a) The court may modify the administrative or dispositive
520 terms of a trust or terminate the trust if, because of circumstances
521 not anticipated by the settlor, modification or termination will fur-
522 ther the purposes of the trust. To the extent practicable, the modi-
523 fication must be made in accordance with the settlor's probable
524 intention.

525 (b) The court may modify the administrative terms of a trust if
526 continuation of the trust on its existing terms would be impracti-
527 cable or wasteful or impair the trust's administration.

528 (c) Upon termination of a trust under this section, the trustee
529 shall distribute the trust property in a manner consistent with the
530 purposes of the trust.

531 Section 413. CY PRES.

532 (a) Except as otherwise provided in subsection (b), if a partic-
533 ular charitable purpose becomes unlawful, impracticable, impos-
534 sible to achieve, or wasteful:

535 (1) the trust does not fail, in whole or in part;

536 (2) the trust property does not revert to the settlor or the sett-
537 lor's successors in interest; and

538 (3) the court may apply cy pres to modify or terminate the trust
539 by directing that the trust property be applied or distributed, in
540 whole or in part, in a manner consistent with the settlor's chari-
541 table purposes.

542 (b) A provision in the terms of a charitable trust that would
543 result in distribution of the trust property to a noncharitable bene-
544 ficiary prevails over the power of the court under subsection (a) to
545 apply cy pres to modify or terminate the trust only if, when the
546 provision takes effect:

547 (1) the trust property is to revert to the settlor and the settlor is
548 still living; or

549 (2) fewer than 21 years have elapsed since the date of the
550 trust's creation.

551 Section 414. MODIFICATION OR TERMINATION OF
552 UNECONOMIC TRUST.

553 (a) After notice to the qualified beneficiaries, the trustee of a
554 trust consisting of trust property having a total value less than
555 \$100,000 may terminate the trust if the trustee concludes that the
556 value of the trust property is insufficient to justify the cost of
557 administration.

558 (b) The court may modify or terminate a trust or remove the
559 trustee and appoint a different trustee if it determines that the
560 value of the trust property is insufficient to justify the cost of
561 administration.

562 (c) Upon termination of a trust under this section, the trustee
563 shall distribute the trust property in a manner consistent with the
564 purposes of the trust.

565 (d) This section does not apply to an easement for conservation
566 or preservation.

567 Section 415. REFORMATION TO CORRECT MISTAKES.
568 The court may reform the terms of a trust, even if unambiguous,
569 to conform the terms to the settlor's intention if it is proved by
570 clear and convincing evidence that both the settlor's intent and the
571 terms of the trust were affected by a mistake of fact or law,
572 whether in expression or inducement.

573 Section 416. MODIFICATION TO ACHIEVE SETTLOR'S
574 TAX OBJECTIVES. To achieve the settlor's tax objectives, the
575 court may modify the terms of a trust in a manner that is not con-
576 trary to the settlor's probable intention. The court may provide
577 that the modification has retroactive effect.

578 Section 417. COMBINATION AND DIVISION OF TRUSTS.
579 After notice to the qualified beneficiaries, a trustee may combine
580 two or more trusts into a single trust or divide a trust into two or
581 more separate trusts, if the result does not impair rights of any
582 beneficiary or adversely affect achievement of the purposes of the
583 trust.

584 **ARTICLE 5.**
585 **CREDITOR'S CLAIMS; SPENDTHRIFT AND**
586 **DISCRETIONARY TRUSTS.**

587 Section 501. RIGHTS OF BENEFICIARY'S CREDITOR OR
588 ASSIGNEE. To the extent a beneficiary's interest is not protected
589 by a spendthrift provision, the court may authorize a creditor or
590 assignee of the beneficiary to reach the beneficiary's interest by
591 attachment of present or future distributions to or for the benefit
592 of the beneficiary or other means. The court may limit the award
593 to such relief as is appropriate under the circumstances.

594 Section 502. SPENDTHRIFT PROVISION.

595 (a) A spendthrift provision is valid only if it restrains both vol-
596 untary and involuntary transfer of a beneficiary's interest.

597 (b) A term of a trust providing that the interest of a beneficiary
598 is held subject to a "spendthrift trust," or words of similar import,
599 is sufficient to restrain both voluntary and involuntary transfer of
600 the beneficiary's interest.

601 (c) A beneficiary may not transfer an interest in a trust in viola-
602 tion of a valid spendthrift provision and, except as otherwise pro-
603 vided in this article, a creditor or assignee of the beneficiary may
604 not reach the interest or a distribution by the trustee before its
605 receipt by the beneficiary.

606 Section 503. EXCEPTIONS TO SPENDTHRIFT PROVISION.

607 (a) In this section, “child” includes any person for whom an
608 order or judgment for child support has been entered in this or
609 another State.

610 (b) Even if a trust contains a spendthrift provision, a beneficia-
611 ry’s child, spouse, or former spouse who has a judgment or court
612 order against the beneficiary for support or maintenance, or a
613 judgment creditor who has provided services for the protection of
614 a beneficiary’s interest in the trust, may obtain from a court an
615 order attaching present or future distributions to or for the benefit
616 of the beneficiary.

617 (c) A spendthrift provision is unenforceable against a claim of
618 this commonwealth or the United States to the extent a statute of
619 this commonwealth or federal law so provides.

620 Section 504. DISCRETIONARY TRUSTS; EFFECT OF
621 STANDARD.

622 (a) In this section, “child” includes any person for whom an
623 order or judgment for child support has been entered in this or
624 another State.

625 (b) Except as otherwise provided in subsection (c), whether or
626 not a trust contains a spendthrift provision, a creditor of a benefi-
627 ciary may not compel a distribution that is subject to the trustee’s
628 discretion, even if:

629 (1) the discretion is expressed in the form of a standard of dis-
630 tribution; or

631 (2) the trustee has abused the discretion.

632 (c) To the extent a trustee has not complied with a standard of
633 distribution or has abused a discretion:

634 (1) a distribution may be ordered by the court to satisfy a judg-
635 ment or court order against the beneficiary for support or mainte-
636 nance of the beneficiary’s child, spouse, or former spouse; and

637 (2) the court shall direct the trustee to pay to the child, spouse,
638 or former spouse such amount as is equitable under the circum-
639 stances but not more than the amount the trustee would have been

640 required to distribute to or for the benefit of the beneficiary had
641 the trustee complied with the standard or not abused the discre-
642 tion.

643 (d) This section does not limit the right of a beneficiary to
644 maintain a judicial proceeding against a trustee for an abuse of
645 discretion or failure to comply with a standard for distribution.

646 Section 505. CREDITOR'S CLAIM AGAINST SETTLOR.

647 (a) Whether or not the terms of a trust contain a spendthrift pro-
648 vision, the following rules apply:

649 (1) During the lifetime of the settlor, the property of a revo-
650 cable trust is subject to claims of the settlor's creditors.

651 (2) With respect to an irrevocable trust, a creditor or assignee of
652 the settlor may reach the maximum amount that can be distributed
653 to or for the settlor's benefit. If a trust has more than one settlor,
654 the amount the creditor or assignee of a particular settlor may
655 reach may not exceed the settlor's interest in the portion of the
656 trust attributable to that settlor's contribution.

657 (3) After the death of a settlor, and subject to the settlor's right
658 to direct the source from which liabilities will be paid, the prop-
659 erty of a trust that was revocable at the settlor's death is subject to
660 claims of the settlor's creditors, costs of administration of the sett-
661 lor's estate, the expenses of the settlor's funeral and disposal of
662 remains, and statutory allowances to a surviving spouse to the
663 extent the settlor's probate estate is inadequate to satisfy those
664 claims, costs, expenses, and allowances.

665 (b) For purposes of this section:

666 (1) during the period the power may be exercised, the holder of
667 a power of withdrawal is treated in the same manner as the settlor
668 of a revocable trust to the extent of the property subject to the
669 power; and

670 (2) upon the lapse, release, or waiver of the power, the holder is
671 treated as the settlor of the trust only to the extent the value of the
672 property affected by the lapse, release, or waiver exceeds the
673 greater of the amount specified in Section 2041(b)(2) or 2514(e)
674 of the Internal Revenue Code of 1986, or Section 2503(b) of the
675 Internal Revenue Code of 1986, in each case as in effect on the
676 effective date of this chapter.

677 Section 506. OVERDUE DISTRIBUTION. Whether or not a
678 trust contains a spendthrift provision, a creditor or assignee of a

679 beneficiary may reach a mandatory distribution of income or prin-
680 cipal, including a distribution upon termination of the trust, if the
681 trustee has not made the distribution to the beneficiary within a
682 reasonable time after the designated distribution date.

683 Section 507. PERSONAL OBLIGATIONS OF TRUSTEE.
684 Trust property is not subject to personal obligations of the trustee,
685 even if the trustee becomes insolvent or bankrupt.

686
687

ARTICLE 6. REVOCABLE TRUSTS.

688 Section 601. CAPACITY OF SETTLOR OF REVOCABLE
689 TRUST. The capacity required to create, amend, revoke, or add
690 property to a revocable trust, or to direct the actions of the trustee
691 of a revocable trust, is the same as that required to make a will.

692 Section 602. REVOCATION OR AMENDMENT OF REVO-
693 CABLE TRUST.

694 (a) Unless the terms of a trust expressly provide that the trust is
695 irrevocable, the settlor may revoke or amend the trust. This sub-
696 section does not apply to a trust created under an instrument exe-
697 cuted before the effective date of this chapter.

698 (b) If a revocable trust is created or funded by more than one
699 settlor:

700 (1) to the extent the trust consists of community property, the
701 trust may be revoked by either spouse acting alone but may be
702 amended only by joint action of both spouses; and

703 (2) to the extent the trust consists of property other than com-
704 munity property, each settlor may revoke or amend the trust with
705 regard to the portion of the trust property attributable to that sett-
706 lor's contribution.

707 (c) The settlor may revoke or amend a revocable trust:

708 (1) by substantial compliance with a method provided in the
709 terms of the trust; or

710 (2) if the terms of the trust do not provide a method or the
711 method provided in the terms is not expressly made exclusive, by:

712 (A) a later will or codicil that expressly refers to the trust or
713 specifically devises property that would otherwise have passed
714 according to the terms of the trust; or

715 (B) any other method manifesting clear and convincing evi-
716 dence of the settlor's intent.

717 (d) Upon revocation of a revocable trust, the trustee shall
718 deliver the trust property as the settlor directs.

719 (e) A settlor's powers with respect to revocation, amendment,
720 or distribution of trust property may be exercised by an agent
721 under a power of attorney only to the extent expressly authorized
722 by the terms of the trust or the power.

723 (f) A conservator of the settlor or, if no conservator has been
724 appointed, a guardian of the settlor may exercise a settlor's
725 powers with respect to revocation, amendment, or distribution of
726 trust property only with the approval of the court supervising the
727 conservatorship or guardianship.

728 (g) A trustee who does not know that a trust has been revoked
729 or amended is not liable to the settlor or settlor's successors in
730 interest for distributions made and other actions taken on the
731 assumption that the trust had not been amended or revoked.

732 Section 603. SETTLOR'S POWERS; POWERS OF WITH-
733 DRAWAL.

734 (a) While a trust is revocable and the settlor has capacity to
735 revoke the trust, rights of the beneficiaries are subject to the con-
736 trol of, and the duties of the trustee are owed exclusively to, the
737 settlor.

738 (b) If a revocable trust has more than one settlor, the duties of
739 the trustee are owed to all of the settlors having capacity to revoke
740 the trust.

741 (c) During the period the power may be exercised, the holder of
742 a power of withdrawal has the rights of a settlor of a revocable
743 trust under this section to the extent of the property subject to the
744 power.

745 Section 604. LIMITATION ON ACTION CONTESTING
746 VALIDITY OF REVOCABLE TRUST; DISTRIBUTION OF
747 TRUST PROPERTY.

748 (a) A person may commence a judicial proceeding to contest
749 the validity of a trust that was revocable at the settlor's death
750 within the earlier of:

751 (1) three years after the settlor's death; or

752 (2) 120 days after the trustee sent the person a copy of the trust
753 instrument and a notice informing the person of the trust's exis-

754 tence, of the trustee's name and address, and of the time allowed
755 for commencing a proceeding.

756 (b) Upon the death of the settlor of a trust that was revocable at
757 the settlor's death, the trustee may proceed to distribute the trust
758 property in accordance with the terms of the trust. The trustee is
759 not subject to liability for doing so unless:

760 (1) the trustee knows of a pending judicial proceeding con-
761 testing the validity of the trust; or

762 (2) a potential contestant has notified the trustee of a possible
763 judicial proceeding to contest the trust and a judicial proceeding is
764 commenced within 60 days after the contestant sent the notifica-
765 tion.

766 (c) A beneficiary of a trust that is determined to have been
767 invalid is liable to return any distribution received.

768 **ARTICLE 7.**
769 **OFFICE OF TRUSTEE.**

770 Section 701. ACCEPTING OR DECLINING TRUSTEESHIP.

771 (a) Except as otherwise provided in subsection (c), a person
772 designated as trustee accepts the trusteeship:

773 (1) by substantially complying with a method of acceptance
774 provided in the terms of the trust; or

775 (2) if the terms of the trust do not provide a method or the
776 method provided in the terms is not expressly made exclusive, by
777 accepting delivery of the trust property, exercising powers or per-
778 forming duties as trustee, or otherwise indicating acceptance of
779 the trusteeship.

780 (b) A person designated as trustee who has not yet accepted the
781 trusteeship may reject the trusteeship. A designated trustee who
782 does not accept the trusteeship within a reasonable time after
783 knowing of the designation is deemed to have rejected the trustee-
784 ship.

785 (c) A person designated as trustee, without accepting the
786 trusteeship, may:

787 (1) act to preserve the trust property if, within a reasonable time
788 after acting, the person sends a rejection of the trusteeship to the
789 settlor or, if the settlor is dead or lacks capacity, to a qualified
790 beneficiary; and

791 (2) inspect or investigate trust property to determine potential
792 liability under environmental or other law or for any other pur-
793 pose.

794 Section 702. TRUSTEE'S BOND.

795 (a) A trustee shall give bond to secure performance of the
796 trustee's duties only if the court finds that a bond is needed to pro-
797 tect the interests of the beneficiaries or is required by the terms of
798 the trust and the court has not dispensed with the requirement.

799 (b) The court may specify the amount of a bond, its liabilities,
800 and whether sureties are necessary. The court may modify or ter-
801 minate a bond at any time.

802 Section 703. CO-TRUSTEES.

803 (a) Co-trustees who are unable to reach a unanimous decision
804 may act by majority decision.

805 (b) If a vacancy occurs in a co-trusteeship, the remaining co-
806 trustees may act for the trust.

807 (c) A co-trustee must participate in the performance of a
808 trustee's function unless the co-trustee is unavailable to perform
809 the function because of absence, illness, disqualification under
810 other law, or other temporary incapacity or the co-trustee has
811 properly delegated the performance of the function to another
812 trustee.

813 (d) If a co-trustee is unavailable to perform duties because of
814 absence, illness, disqualification under other law, or other tempo-
815 rary incapacity, and prompt action is necessary to achieve the pur-
816 poses of the trust or to avoid injury to the trust property, the
817 remaining co-trustee or a majority of the remaining co-trustees
818 may act for the trust.

819 (e) A trustee may not delegate to a co-trustee the performance
820 of a function the settlor reasonably expected the trustees to per-
821 form jointly. Unless a delegation was irrevocable, a trustee may
822 revoke a delegation previously made.

823 (f) Except as otherwise provided in subsection (g), a trustee
824 who does not join in an action of another trustee is not liable for
825 the action.

826 (g) Each trustee shall exercise reasonable care to:

827 (1) prevent a co-trustee from committing a serious breach of
828 trust; and

829 (2) compel a co-trustee to redress a serious breach of trust.

830 (h) A dissenting trustee who joins in an action at the direction
831 of the majority of the trustees and who notified any co-trustee of
832 the dissent at or before the time of the action is not liable for the
833 action unless the action is a serious breach of trust.

834 Section 704. VACANCY IN TRUSTEESHIP; APPOINTMENT
835 OF SUCCESSOR.

836 (a) A vacancy in a trusteeship occurs if:

837 (1) the settlor omits to appoint a trustee;

838 (2) a person designated as trustee rejects the trusteeship;

839 (3) a person designated as trustee cannot be identified or does
840 not exist;

841 (4) a trustee resigns;

842 (5) a trustee is disqualified or removed;

843 (6) a trustee dies; or

844 (7) a guardian or conservator is appointed for an individual
845 serving as trustee:

846 (b) If one or more cotrustees remain in office, a vacancy in a
847 trusteeship need not be filled. A vacancy in a trusteeship must be
848 filled if the trust has no remaining trustee.

849 (c) A vacancy in a trusteeship of a noncharitable trust that is
850 required to be filled must be filled in the following order of pri-
851 ority:

852 (1) by a person designated in the terms of the trust to act as suc-
853 cessor trustee;

854 (2) by a person appointed by unanimous agreement of the qual-
855 ified beneficiaries; or

856 (3) by a person appointed by the court.

857 (d) A vacancy in a trusteeship of a charitable trust that is
858 required to be filled must be filled in the following order of pri-
859 ority:

860 (1) by a person designated in the terms of the trust to act as suc-
861 cessor trustee;

862 (2) by a person selected by the charitable organizations
863 expressly designated to receive distributions under the terms of
864 the trust if the attorney general concurs in the selection; or

865 (3) by a person appointed by the court.

866 (e) Whether or not a vacancy in a trusteeship exists or is
867 required to be filled, the court may appoint an additional trustee or
868 special fiduciary whenever the court considers the appointment
869 necessary for the administration of the trust.

870 Section 705. RESIGNATION OF TRUSTEE.

871 (a) A trustee may resign:

872 (1) upon at least 30 days' notice to the qualified beneficiaries,
873 the settlor, if living, and all co-trustees; or

874 (2) with the approval of the court.

875 (b) In approving a resignation, the court may issue orders and
876 impose conditions reasonably necessary for the protection of the
877 trust property.

878 (c) Any liability of a resigning trustee or of any sureties on the
879 trustee's bond for acts or omissions of the trustee is not discharged
880 or affected by the trustee's resignation.

881 Section 706. REMOVAL OF TRUSTEE.

882 (a) The settlor, a co-trustee, or a beneficiary may request the
883 court to remove a trustee, or a trustee may be removed by the
884 court on its own initiative.

885 (b) The court may remove a trustee if:

886 (1) the trustee has committed a serious breach of trust;

887 (2) lack of cooperation among co-trustees substantially impairs
888 the administration of the trust;

889 (3) because of unfitness, unwillingness, or persistent failure of
890 the trustee to administer the trust effectively, the court determines
891 that removal of the trustee best serves the interests of the benefi-
892 ciaries; or

893 (4) there has been a substantial change of circumstances or
894 removal is requested by all of the qualified beneficiaries, the court
895 finds that removal of the trustee best serves the interests of all of
896 the beneficiaries and is not inconsistent with a material purpose of
897 the trust, and a suitable co-trustee or successor trustee is available.

898 (c) Pending a final decision on a request to remove a trustee, or
899 in lieu of or in addition to removing a trustee, the court may order
900 such appropriate relief under Section 1001(b) as may be necessary
901 to protect the trust property or the interests of the beneficiaries.

902 Section 707. DELIVERY OF PROPERTY BY FORMER
903 TRUSTEE.

904 (a) Unless a co-trustee remains in office or the court otherwise
905 orders, and until the trust property is delivered to a successor
906 trustee or other person entitled to it, a trustee who has resigned or
907 been removed has the duties of a trustee and the powers necessary
908 to protect the trust property.

909 (b) A trustee who has resigned or been removed shall proceed
910 expeditiously to deliver the trust property within the trustee's pos-
911 session to the co-trustee, successor trustee, or other person enti-
912 tled to it.

913 Section 708. COMPENSATION OF TRUSTEE.

914 (a) If the terms of a trust do not specify the trustee's compensa-
915 tion, a trustee is entitled to compensation that is reasonable under
916 the circumstances.

917 (b) If the terms of a trust specify the trustee's compensation, the
918 trustee is entitled to be compensated as specified, but the court
919 may allow more or less compensation if:

920 (1) the duties of the trustee are substantially different from
921 those contemplated when the trust was created; or

922 (2) the compensation specified by the terms of the trust would
923 be unreasonably low or high.

924 Section 709. REIMBURSEMENT OF EXPENSES.

925 (a) A trustee is entitled to be reimbursed out of the trust prop-
926 erty, with interest as appropriate, for:

927 (1) expenses that were properly incurred in the administration
928 of the trust; and

929 (2) to the extent necessary to prevent unjust enrichment of the
930 trust, expenses that were not properly incurred in the administra-
931 tion of the trust.

932 (b) An advance by the trustee of money for the protection of the
933 trust gives rise to a lien against trust property to secure reimburse-
934 ment with reasonable interest.

935

ARTICLE 8.

936

DUTIES AND POWERS OF TRUSTEE.

937 Section 801. DUTY TO ADMINISTER TRUST. Upon accep-
938 tance of a trusteeship, the trustee shall administer the trust in good
939 faith, in accordance with its terms and purposes and the interests
940 of the beneficiaries, and in accordance with this chapter.

941 Section 802. DUTY OF LOYALTY.

942 (a) A trustee shall administer the trust solely in the interests of
943 the beneficiaries.

944 (b) Subject to the rights of persons dealing with or assisting the
945 trustee as provided in Section 1012, a sale, encumbrance, or other

946 transaction involving the investment or management of trust prop-
947 erty entered into by the trustee for the trustee's own personal
948 account or which is otherwise affected by a conflict between the
949 trustee's fiduciary and personal interests is voidable by a benefi-
950 ciary affected by the transaction unless:

951 (1) the transaction was authorized by the terms of the trust;

952 (2) the transaction was approved by the court;

953 (3) the beneficiary did not commence a judicial proceeding
954 within the time allowed by Section 1005;

955 (4) the beneficiary consented to the trustee's conduct, ratified
956 the transaction, or released the trustee in compliance with Section
957 1009; or

958 (5) the transaction involves a contract entered into or claim
959 acquired by the trustee before the person became or contemplated
960 becoming trustee.

961 (c) A sale, encumbrance, or other transaction involving the
962 investment or management of trust property is presumed to be
963 affected by a conflict between personal and fiduciary interests if it
964 is entered into by the trustee with:

965 (1) the trustee's spouse;

966 (2) the trustee's descendants, siblings, parents, or their spouses;

967 (3) an agent or attorney of the trustee; or

968 (4) a corporation or other person or enterprise in which the
969 trustee, or a person that owns a significant interest in the trustee,
970 has an interest that might affect the trustee's best judgment.

971 (d) A transaction between a trustee and a beneficiary that does
972 not concern trust property but that occurs during the existence of
973 the trust or while the trustee retains significant influence over the
974 beneficiary and from which the trustee obtains an advantage is
975 voidable by the beneficiary unless the trustee establishes that the
976 transaction was fair to the beneficiary.

977 (e) A transaction not concerning trust property in which the
978 trustee engages in the trustee's individual capacity involves a con-
979 flict between personal and fiduciary interests if the transaction
980 concerns an opportunity properly belonging to the trust.

981 (f) An investment by a trustee in securities of an investment
982 company or investment trust to which the trustee, or its affiliate,
983 provides services in a capacity other than as trustee is not pre-
984 sumed to be affected by a conflict between personal and fiduciary

985 interests if the investment complies with the prudent investor rule
986 of chapter two hundred and three C. The trustee may be compen-
987 sated by the investment company or investment trust for providing
988 those services out of fees charged to the trust if the trustee at least
989 annually notifies the persons entitled under Section 813 to receive
990 a copy of the trustee's annual report of the rate and method by
991 which the compensation was determined.

992 (g) In voting shares of stock or in exercising powers of control
993 over similar interests in other forms of enterprise, the trustee shall
994 act in the best interests of the beneficiaries. If the trust is the sole
995 owner of a corporation or other form of enterprise, the trustee
996 shall elect or appoint directors or other managers who will
997 manage the corporation or enterprise in the best interests of the
998 beneficiaries.

999 (h) This section does not preclude the following transactions, if
1000 fair to the beneficiaries:

1001 (1) an agreement between a trustee and a beneficiary relating to
1002 the appointment or compensation of the trustee;

1003 (2) payment of reasonable compensation to the trustee;

1004 (3) a transaction between a trust and another trust, decedent's
1005 estate, or conservatorship of which the trustee is a fiduciary or in
1006 which a beneficiary has an interest;

1007 (4) a deposit of trust money in a regulated financial-service
1008 institution operated by the trustee; or

1009 (5) an advance by the trustee of money for the protection of the
1010 trust.

1011 (i) The court may appoint a special fiduciary to make a decision
1012 with respect to any proposed transaction that might violate this
1013 section if entered into by the trustee.

1014 Section 803. IMPARTIALITY. If a trust has two or more bene-
1015 ficiaries, the trustee shall act impartially in investing, managing,
1016 and distributing the trust property, giving due regard to the benefi-
1017 ciaries' respective interests.

1018 Section 804. PRUDENT ADMINISTRATION. A trustee shall
1019 administer the trust as a prudent person would, by considering the
1020 purposes, terms, distributional requirements, and other circum-
1021 stances of the trust. In satisfying this standard, the trustee shall
1022 exercise reasonable care, skill, and caution.

1023 Section 805. COSTS OF ADMINISTRATION. In adminis-
1024 tering a trust, the trustee may incur only costs that are reasonable
1025 in relation to the trust property, the purposes of the trust, and the
1026 skills of the trustee.

1027 Section 806. TRUSTEE'S SKILLS. A trustee who has special
1028 skills or expertise, or is named trustee in reliance upon the
1029 trustee's representation that the trustee has special skills or exper-
1030 tise, shall use those special skills or expertise.

1031 Section 807. DELEGATION BY TRUSTEE.

1032 (a) A trustee may delegate duties and powers that a prudent
1033 trustee of comparable skills could properly delegate under the cir-
1034 cumstances. The trustee shall exercise reasonable care, skill, and
1035 caution in:

1036 (1) selecting an agent;

1037 (2) establishing the scope and terms of the delegation, consis-
1038 tent with the purposes and terms of the trust; and

1039 (3) periodically reviewing the agent's actions in order to mon-
1040 itor the agent's performance and compliance with the terms of the
1041 delegation.

1042 (b) In performing a delegated function, an agent owes a duty to
1043 the trust to exercise reasonable care to comply with the terms of
1044 the delegation.

1045 (c) A trustee who complies with subsection (a) is not liable to
1046 the beneficiaries or to the trust for an action of the agent to whom
1047 the function was delegated.

1048 (d) By accepting a delegation of powers or duties from the
1049 trustee of a trust that is subject to the law of this commonwealth,
1050 an agent submits to the jurisdiction of the courts of this common-
1051 wealth.

1052 Section 808. POWERS TO DIRECT.

1053 (a) While a trust is revocable, the trustee may follow a direction
1054 of the settlor that is contrary to the terms of the trust.

1055 (b) If the terms of a trust confer upon a person other than the
1056 settlor of a revocable trust power to direct certain actions of the
1057 trustee, the trustee shall act in accordance with an exercise of the
1058 power unless the attempted exercise is manifestly contrary to the
1059 terms of the trust or the trustee knows the attempted exercise
1060 would constitute a serious breach of a fiduciary duty that the
1061 person holding the power owes to the beneficiaries of the trust.

1062 (c) The terms of a trust may confer upon a trustee or other
1063 person a power to direct the modification or termination of the
1064 trust.

1065 (d) A person, other than a beneficiary, who holds a power to
1066 direct is presumptively a fiduciary who, as such, is required to act
1067 in good faith with regard to the purposes of the trust and the inter-
1068 ests of the beneficiaries. The holder of a power to direct is liable
1069 for any loss that results from breach of a fiduciary duty.

1070 Section 809. CONTROL AND PROTECTION OF TRUST
1071 PROPERTY. A trustee shall take reasonable steps to take control
1072 of and protect the trust property.

1073 Section 810. RECORDKEEPING AND IDENTIFICATION OF
1074 TRUST PROPERTY.

1075 (a) A trustee shall keep adequate records of the administration
1076 of the trust.

1077 (b) A trustee shall keep trust property separate from the
1078 trustee's own property.

1079 (c) Except as otherwise provided in subsection (d), a trustee
1080 shall cause the trust property to be designated so that the interest
1081 of the trust, to the extent feasible, appears in records maintained
1082 by a party other than a trustee or beneficiary.

1083 (d) If the trustee maintains records clearly indicating the
1084 respective interests, a trustee may invest as a whole the property
1085 of two or more separate trusts.

1086 Section 811. ENFORCEMENT AND DEFENSE OF CLAIMS.
1087 A trustee shall take reasonable steps to enforce claims of the trust
1088 and to defend claims against the trust.

1089 Section 812. COLLECTING TRUST PROPERTY. A trustee
1090 shall take reasonable steps to compel a former trustee or other
1091 person to deliver trust property to the trustee, and to redress a
1092 breach of trust known to the trustee to have been committed by a
1093 former trustee.

1094 Section 813. DUTY TO INFORM AND REPORT.

1095 (a) A trustee shall keep the qualified beneficiaries of the trust
1096 reasonably informed about the administration of the trust and of
1097 the material facts necessary for them to protect their interests.
1098 Unless unreasonable under the circumstances, a trustee shall
1099 promptly respond to a beneficiary's request for information
1100 related to the administration of the trust.

1101 (b) A trustee:

1102 (1) upon request of a beneficiary, shall promptly furnish to the
1103 beneficiary a copy of the trust instrument;

1104 (2) within 60 days after accepting a trusteeship, shall notify the
1105 qualified beneficiaries of the acceptance and of the trustee's name,
1106 address, and telephone number;

1107 (3) within 60 days after the date the trustee acquires knowledge
1108 of the creation of an irrevocable trust, or the date the trustee
1109 acquires knowledge that a formerly revocable trust has become
1110 irrevocable, whether by the death of the settlor or otherwise, shall
1111 notify the qualified beneficiaries of the trust's existence, of the
1112 identity of the settlor or settlors, of the right to request a copy of
1113 the trust instrument, and of the right to a trustee's report as pro-
1114 vided in subsection (c); and

1115 (4) shall notify the qualified beneficiaries in advance of any
1116 change in the method or rate of the trustee's compensation.

1117 (c) A trustee shall send to the distributees or permissible dis-
1118 tributees of trust income or principal, and to other qualified or
1119 nonqualified beneficiaries who request it, at least annually and at
1120 the termination of the trust, a report of the trust property, liabili-
1121 ties, receipts, and disbursements, including the source and amount
1122 of the trustee's compensation, a listing of the trust assets and, if
1123 feasible, their respective market values. Upon a vacancy in a
1124 trusteeship, unless a cotrustee remains in office, a report must be
1125 sent to the qualified beneficiaries by the former trustee. A per-
1126 sonal representative, conservator, or guardian may send the quali-
1127 fied beneficiaries a report on behalf of a deceased or incapacitated
1128 trustee.

1129 (d) A beneficiary may waive the right to a trustee's report or
1130 other information otherwise required to be furnished under this
1131 section. A beneficiary, with respect to future reports and other
1132 information, may withdraw a waiver previously given.

1133 Section 814. DISCRETIONARY POWERS; TAX SAVINGS.

1134 (a) Notwithstanding the breadth of discretion granted to a
1135 trustee in the terms of the trust, including the use of such terms as
1136 "absolute", "sole", or "uncontrolled", the trustee shall exercise a
1137 discretionary power in good faith and in accordance with the
1138 terms and purposes of the trust and the interests of the beneficia-
1139 ries.

1140 (b) Subject to subsection (d), and unless the terms of the trust
1141 expressly indicate that a rule in this subsection does not apply:

1142 (1) a person other than a settlor who is a beneficiary and trustee
1143 of a trust that confers on the trustee a power to make discretionary
1144 distributions to or for the trustee's personal benefit may exercise
1145 the power only in accordance with an ascertainable standard
1146 relating to the trustee's individual health, education, support, or
1147 maintenance within the meaning of Section 2041(b)(1)(A) or
1148 2514(c)(1) of the Internal Revenue Code of 1986, as in effect on
1149 the effective date of this chapter; and

1150 (2) a trustee may not exercise a power to make discretionary
1151 distributions to satisfy a legal obligation of support that the trustee
1152 personally owes another person.

1153 (c) A power whose exercise is limited or prohibited by subsec-
1154 tion (b) may be exercised by a majority of the remaining trustees
1155 whose exercise of the power is not so limited or prohibited. If the
1156 power of all trustees is so limited or prohibited, the court may
1157 appoint a special fiduciary with authority to exercise the power.

1158 (d) Subsection (b) does not apply to:

1159 (1) a power held by the settlor's spouse who is the trustee of a
1160 trust for which a marital deduction, as defined in Section
1161 2056(b)(5) or 2523(e) of the Internal Revenue Code of 1986, as in
1162 effect on the effective date of this chapter, was previously
1163 allowed;

1164 (2) any trust during any period that the trust may be revoked or
1165 amended by its settlor; or

1166 (3) a trust if contributions to the trust qualify for the annual
1167 exclusion under Section 2503(c) of the Internal Revenue Code of
1168 1986, as in effect on the effective date of this chapter.

1169 Section 815. GENERAL POWERS OF TRUSTEE.

1170 (a) A trustee, without authorization by the court, may exercise:

1171 (1) powers conferred by the terms of the trust; or

1172 (2) except as limited by the terms of the trust:

1173 (A) all powers over the trust property which an unmarried com-
1174 petent owner has over individually owned property;

1175 (B) any other powers appropriate to achieve the proper invest-
1176 ment, management, and distribution of the trust property; and

1177 (C) any other powers conferred by this chapter.

1178 (b) The exercise of a power is subject to the fiduciary duties
1179 prescribed by this article.

1180 Section 816. SPECIFIC POWERS OF TRUSTEE. Without lim-
1181 iting the authority conferred by Section 815, a trustee may:

1182 (1) collect trust property and accept or reject additions to the
1183 trust property from a settlor or any other person;

1184 (2) acquire or sell property, for cash or on credit, at public or
1185 private sale;

1186 (3) exchange, partition, or otherwise change the character of
1187 trust property;

1188 (4) deposit trust money in an account in a regulated financial-
1189 service institution;

1190 (5) borrow money, with or without security, and mortgage or
1191 pledge trust property for a period within or extending beyond the
1192 duration of the trust;

1193 (6) with respect to an interest in a proprietorship, partnership,
1194 limited liability company, business trust, corporation, or other
1195 form of business or enterprise, continue the business or other
1196 enterprise and take any action that may be taken by shareholders,
1197 members, or property owners, including merging, dissolving, or
1198 otherwise changing the form of business organization or con-
1199 tributing additional capital;

1200 (7) with respect to stocks or other securities, exercise the rights
1201 of an absolute owner, including the right to:

1202 (A) vote, or give proxies to vote, with or without power of sub-
1203 stitution, or enter into or continue a voting trust agreement;

1204 (B) hold a security in the name of a nominee or in other form
1205 without disclosure of the trust so that title may pass by delivery;

1206 (C) pay calls, assessments, and other sums chargeable or
1207 accruing against the securities, and sell or exercise stock subscrip-
1208 tion or conversion rights; and

1209 (D) deposit the securities with a depositary or other regulated
1210 financial-service institution;

1211 (8) with respect to an interest in real property, construct, or
1212 make ordinary or extraordinary repairs to, alterations to, or
1213 improvements in, buildings or other structures, demolish improve-
1214 ments, raze existing or erect new party walls or buildings, subdi-
1215 vide or develop land, dedicate land to public use or grant public or
1216 private easements, and make or vacate plats and adjust bound-
1217 aries;

1218 (9) enter into a lease for any purpose as lessor or lessee,
1219 including a lease or other arrangement for exploration and
1220 removal of natural resources, with or without the option to pur-
1221 chase or renew, for a period within or extending beyond the dura-
1222 tion of the trust;

1223 (10) grant an option involving a sale, lease, or other disposition
1224 of trust property or acquire an option for the acquisition of prop-
1225 erty, including an option exercisable beyond the duration of the
1226 trust, and exercise an option so acquired;

1227 (11) insure the property of the trust against damage or loss and
1228 insure the trustee, the trustee's agents, and beneficiaries against
1229 liability arising from the administration of the trust;

1230 (12) abandon or decline to administer property of no value or of
1231 insufficient value to justify its collection or continued administra-
1232 tion;

1233 (13) with respect to possible liability for violation of environ-
1234 mental law:

1235 (A) inspect or investigate property the trustee holds or has been
1236 asked to hold, or property owned or operated by an organization
1237 in which the trustee holds or has been asked to hold an interest,
1238 for the purpose of determining the application of environmental
1239 law with respect to the property;

1240 (B) take action to prevent, abate, or otherwise remedy any
1241 actual or potential violation of any environmental law affecting
1242 property held directly or indirectly by the trustee, whether taken
1243 before or after the assertion of a claim or the initiation of govern-
1244 mental enforcement;

1245 (C) decline to accept property into trust or disclaim any power
1246 with respect to property that is or may be burdened with liability
1247 for violation of environmental law;

1248 (D) compromise claims against the trust which may be asserted
1249 for an alleged violation of environmental law; and

1250 (E) pay the expense of any inspection, review, abatement, or
1251 remedial action to comply with environmental law;

1252 (14) pay or contest any claim, settle a claim by or against the
1253 trust, and release, in whole or in part, a claim belonging to the
1254 trust;

1255 (15) pay taxes, assessments, compensation of the trustee and of
1256 employees and agents of the trust, and other expenses incurred in
1257 the administration of the trust;

1258 (16) exercise elections with respect to federal, state, and local
1259 taxes;

1260 (17) select a mode of payment under any employee benefit or
1261 retirement plan, annuity, or life insurance payable to the trustee,
1262 exercise rights thereunder, including exercise of the right to
1263 indemnification for expenses and against liabilities, and take
1264 appropriate action to collect the proceeds;

1265 (18) make loans out of trust property, including loans to a bene-
1266 ficiary on terms and conditions the trustee considers to be fair and
1267 reasonable under the circumstances, and the trustee has a lien on
1268 future distributions for repayment of those loans;

1269 (19) pledge trust property to guarantee loans made by others to
1270 the beneficiary;

1271 (20) appoint a trustee to act in another jurisdiction with respect
1272 to trust property located in the other jurisdiction, confer upon the
1273 appointed trustee all of the powers and duties of the appointing
1274 trustee, require that the appointed trustee furnish security, and
1275 remove any trustee so appointed;

1276 (21) pay an amount distributable to a beneficiary who is under
1277 a legal disability or who the trustee reasonably believes is inca-
1278 pacitated, by paying it directly to the beneficiary or applying it for
1279 the beneficiary's benefit, or by:

1280 (A) paying it to the beneficiary's conservator or, if the benefi-
1281 ciary does not have a conservator, the beneficiary's guardian;

1282 (B) paying it to the beneficiary's custodian under the Uniform
1283 Transfers to Minors Act or custodial trustee under the Uniform
1284 Custodial Trust Act, and, for that purpose, creating a custodian-
1285 ship or custodial trust;

1286 (C) if the trustee does not know of a conservator, guardian, cus-
1287 todian, or custodial trustee, paying it to an adult relative or other
1288 person having legal or physical care or custody of the beneficiary,
1289 to be expended on the beneficiary's behalf, or

1290 (D) managing it as a separate fund on the beneficiary's behalf,
1291 subject to the beneficiary's continuing right to withdraw the distri-
1292 bution;

1293 (22) on distribution of trust property or the division or termina-
1294 tion of a trust; make distributions in divided or undivided inter-
1295 ests, allocate particular assets in proportionate or disproportionate
1296 shares, value the trust property for those purposes, and, adjust for
1297 resulting differences in valuation;

1298 (23) resolve a dispute concerning the interpretation of the trust
1299 or its administration by mediation, arbitration, or other procedure
1300 for alternative dispute resolution;

1301 (24) prosecute or defend an action, claim, or judicial pro-
1302 ceeding in any jurisdiction to protect trust property and the trustee
1303 in the performance of the trustee's duties;

1304 (25) sign and deliver contracts and other instruments that are
1305 useful to achieve or facilitate the exercise of the trustee's powers;
1306 and

1307 (26) on termination of the trust, exercise the powers appropriate
1308 to wind up the administration of the trust and distribute the trust
1309 property to the persons entitled to it.

1310 Section 817. DISTRIBUTION UPON TERMINATION.

1311 (a) Upon termination or partial termination of a trust, the
1312 trustee may send to the beneficiaries a proposal for distribution.
1313 The right of any beneficiary to object to the proposed distribution
1314 terminates if the beneficiary does not notify the trustee of an
1315 objection within 30 days after the proposal was sent but only if
1316 the proposal informed the beneficiary of the right to object and of
1317 the time allowed for objection.

1318 (b) Upon the occurrence of an event terminating or partially ter-
1319 minating a trust, the trustee shall proceed expeditiously to dis-
1320 tribute the trust property to the persons entitled to it, subject to the
1321 right of the trustee to retain a reasonable reserve for the payment
1322 of debts, expenses, and taxes.

1323 (c) A release by a beneficiary of a trustee from liability for
1324 breach of trust is invalid to the extent:

1325 (1) it was induced by improper conduct of the trustee; or

1326 (2) the beneficiary, at the time of the release, did not know of
1327 the beneficiary's rights or of the material facts relating to the
1328 breach.

1329 **ARTICLE 9.**

1330 **RESERVED.**

1331 **ARTICLE 10.**

1332 **LIABILITY OF TRUSTEES AND RIGHTS**
1333 **OF PERSONS DEALING WITH TRUSTEE.**

1334 Section 1001. REMEDIES FOR BREACH OF TRUST.

1335 (a) A violation by a trustee of a duty the trustee owes to a bene-
1336 ficiary is a breach of trust.

1337 (b) To remedy a breach of trust that has occurred or may occur,
1338 the court may:

1339 (1) compel the trustee to perform the trustee's duties;

1340 (2) enjoin the trustee from committing a breach of trust;

1341 (3) compel the trustee to redress a breach of trust by paying
1342 money, restoring property, or other means;

1343 (4) order a trustee to account;

1344 (5) appoint a special fiduciary to take possession of the trust
1345 property and administer the trust;

1346 (6) suspend the trustee;

1347 (7) remove the trustee as provided in Section 706;

1348 (8) reduce or deny compensation to the trustee;

1349 (9) subject to Section 1012, void an act of the trustee, impose a
1350 lien or a constructive trust on trust property, or trace trust property
1351 wrongfully disposed of and recover the property or its proceeds;
1352 or

1353 (10) order any other appropriate relief.

1354 Section 1002. DAMAGES FOR BREACH OF TRUST.

1355 (a) A trustee who commits a breach of trust is liable to the ben-
1356 eficiaries affected for the greater of:

1357 (1) the amount required to restore the value of the trust property
1358 and trust distributions to what they would have been had the
1359 breach not occurred; or

1360 (2) the profit the trustee made by reason of the breach.

1361 (b) Except as otherwise provided in this subsection, if more
1362 than one trustee is liable to the beneficiaries for a breach of trust,
1363 a trustee is entitled to contribution from the other trustee or
1364 trustees. A trustee is not entitled to contribution if the trustee was
1365 substantially more at fault than another trustee or if the trustee
1366 committed the breach of trust in bad faith or with reckless indif-
1367 ference to the purposes of the trust or the interests of the benefi-
1368 ciaries. A trustee who received a benefit from the breach of trust
1369 is not entitled to contribution from another trustee to the extent of
1370 the benefit received.

1371 Section 1003. DAMAGES IN ABSENCE OF BREACH.

1372 (a) A trustee is accountable to an affected beneficiary for any
1373 profit made by the trustee arising from the administration of the
1374 trust, even absent a breach of trust.

1375 (b) Absent a breach of trust, a trustee is not liable to a benefi-
1376 ciary for a loss or depreciation in the value of trust property or for
1377 not having made a profit.

1378 Section 1004. ATTORNEY'S FEES AND COSTS. In a judicial
1379 proceeding involving the administration of a trust, the court, as
1380 justice and equity may require, may award costs and expenses,
1381 including reasonable attorney's fees, to any party, to be paid by
1382 another party or from the trust that is the subject of the contro-
1383 versy.

1384 Section 1005. LIMITATION OF ACTION AGAINST
1385 TRUSTEE.

1386 (a) A beneficiary may not commence a proceeding against a
1387 trustee for breach of trust more than one year after the date the
1388 beneficiary or a representative of the beneficiary was sent a report
1389 that adequately disclosed the existence of a potential claim for
1390 breach of trust and informed the beneficiary of the time allowed
1391 for commencing a proceeding.

1392 (b) A report adequately discloses the existence of a potential
1393 claim for breach of trust if it provides sufficient information so
1394 that the beneficiary or representative knows of the potential claim
1395 or should have inquired into its existence.

1396 (c) If subsection (a) does not apply, a judicial proceeding by a
1397 beneficiary against a trustee for breach of trust must be com-
1398 menced within five years after the first to occur of:

1399 (1) the removal, resignation, or death of the trustee;

1400 (2) the termination of the beneficiary's interest in the trust; or

1401 (3) the termination of the trust.

1402 Section 1006. RELIANCE ON TRUST INSTRUMENT. A
1403 trustee who acts in reasonable reliance on the terms of the trust as
1404 expressed in the trust instrument is not liable to a beneficiary for a
1405 breach of trust to the extent the breach resulted from the reliance.

1406 Section 1007. EVENT AFFECTING ADMINISTRATION OR
1407 DISTRIBUTION. If the happening of an event, including mar-
1408 riage, divorce, performance of educational requirements, or death,
1409 affects the administration or distribution of a trust, a trustee who
1410 has exercised reasonable care to ascertain the happening of the
1411 event is not liable for a loss resulting from the trustee's lack of
1412 knowledge.

1413 Section 1008. EXCULPATION OF TRUSTEE.

1414 (a) A term of a trust relieving a trustee of liability for breach of
1415 trust is unenforceable to the extent that it:

1416 (1) relieves the trustee of liability for breach of trust committed
1417 in bad faith or with reckless indifference to the purposes of the
1418 trust or the interests of the beneficiaries; or

1419 (2) was inserted as the result of an abuse by the trustee of a
1420 fiduciary or confidential relationship to the settlor.

1421 (b) An exculpatory term drafted or caused to be drafted by the
1422 trustee is invalid as an abuse of a fiduciary or confidential rela-
1423 tionship unless the trustee proves that the exculpatory term is fair
1424 under the circumstances and that its existence and contents were
1425 adequately communicated to the settlor.

1426 Section 1009. BENEFICIARY'S CONSENT, RELEASE, OR
1427 RATIFICATION. A trustee is not liable to a beneficiary for breach
1428 of trust if the beneficiary, consented to the conduct constituting
1429 the breach, released the trustee from liability for the breach, or
1430 ratified the transaction constituting the breach, unless:

1431 (1) the consent, release, or ratification of the beneficiary was
1432 induced by improper conduct of the trustee; or

1433 (2) at the time of the consent, release, or ratification, the benefi-
1434 ciary did not know of the beneficiary's rights or of the material
1435 facts relating to the breach.

1436 Section 1010. LIMITATION ON PERSONAL LIABILITY OF
1437 TRUSTEE.

1438 (a) Except as otherwise provided in the contract, a trustee is not
1439 personally liable on a contract properly entered into in the
1440 trustee's fiduciary capacity in the course of administering the trust
1441 if the trustee in the contract disclosed the fiduciary capacity.

1442 (b) A trustee is personally liable for torts committed in the
1443 course of administering a trust, or for obligations arising from
1444 ownership or control of trust property, including liability for vio-
1445 lation of environmental law, only if the trustee is personally at
1446 fault.

1447 (c) A claim based on a contract entered into by a trustee in the
1448 trustee, fiduciary capacity, on an obligation arising from owner-
1449 ship or control of trust property, or on a tort committed in the
1450 course of administering a trust, may be asserted in a judicial pro-
1451 ceeding against the trustee in the trustee's fiduciary capacity,
1452 whether or not the trustee is personally liable for the claim.

1453 Section 1011. RESERVED.

1454 Section 1012. PROTECTION OF PERSON DEALING WITH
1455 TRUSTEE.

1456 (a) A person other than a beneficiary who in good faith assists a
1457 trustee, or who in good faith and for value deals with a trustee,
1458 without knowledge that the trustee is exceeding or improperly
1459 exercising the trustee's powers is protected from liability as if the
1460 trustee properly exercised the power.

1461 (b) A person other than a beneficiary who in good faith deals
1462 with a trustee is not required to inquire into the extent of the
1463 trustee's powers or the propriety of their exercise.

1464 (c) A person who in good faith delivers assets to a trustee need
1465 not ensure their proper application.

1466 (d) A person other than a beneficiary who in good faith assists a
1467 former trustee, or who in good faith and for value deals with a
1468 former trustee, without knowledge that the trusteeship has termi-
1469 nated is protected from liability as if the former trustee were still a
1470 trustee.

1471 (e) Comparable protective provisions of other laws relating to
1472 commercial transactions or transfer of securities by fiduciaries
1473 prevail over the protection provided by this section.

1474 Section 1013. CERTIFICATION OF TRUST.

1475 (a) Instead of furnishing a copy of the trust instrument to a
1476 person other than a beneficiary, the trustee may furnish to the
1477 person a certification of trust containing the following informa-
1478 tion:

1479 (1) that the trust exists and the date the trust instrument was
1480 executed;

1481 (2) the identity of the settlor;

1482 (3) the identity and address of the currently acting trustee;

1483 (4) the powers of the trustee;

1484 (5) the revocability or irrevocability of the trust and the identity
1485 of any person holding a power to revoke the trust;

1486 (6) the authority of co-trustees to sign or otherwise authenticate
1487 and whether all or less than all are required in order to exercise
1488 powers of the trustee;

1489 (7) the trust's taxpayer identification number; and

1490 (8) the manner of taking title to trust property.

1491 (b) A certification of trust may be signed or otherwise authenti-
1492 cated by any trustee.

1493 (c) A certification of trust must state that the trust has not been
1494 revoked, modified, or amended in any manner that would cause
1495 the representations contained in the certification of trust to be
1496 incorrect.

1497 (d) A certification of trust need not contain the dispositive
1498 terms of a trust.

1499 (e) A recipient of a certification of trust may require the trustee
1500 to furnish copies of those excerpts from the original trust instru-
1501 ment and later amendments which designate the trustee and confer
1502 upon the trustee the power to act in the pending transaction.

1503 (f) A person who acts in reliance upon a certification of trust
1504 without knowledge that the representations contained therein are
1505 incorrect is not liable to any person for so acting and may assume
1506 without inquiry the existence of the facts contained in the certifi-
1507 cation. Knowledge of the terms of the trust may not be inferred
1508 solely from the fact that a copy of all or part of the trust instru-
1509 ment is held by the person relying upon the certification.

1510 (g) A person who in good faith enters into a transaction in
1511 reliance upon a certification of trust may enforce the transaction
1512 against the trust property as if the representations contained in the
1513 certification were correct.

1514 (h) A person making a demand for the trust instrument in addi-
1515 tion to a certification of trust or excerpts is liable for damages if
1516 the court determines that the person did not act in good faith in
1517 demanding the trust instrument.

1518 (i) This section does not limit the right of a person to obtain a
1519 copy of the trust instrument in a judicial proceeding concerning
1520 the trust.

1521

ARTICLE 11.

1522

MISCELLANEOUS PROVISIONS.

1523 Section 1101. UNIFORMITY OF APPLICATION AND CON-
1524 STRUCTION. In applying and construing this Uniform Act, con-
1525 sideration must be given to the need to promote uniformity of the
1526 law with respect to its subject matter among States that enact it.

1527 Section 1102. ELECTRONIC RECORDS AND SIGNATURES.
1528 The provisions of this chapter governing the legal effect, validity,
1529 or enforceability of electronic records or electronic signatures, and

1530 of contracts formed or performed with the use of such records or
1531 signatures, conform to the requirements of Section 102 of the
1532 Electronic Signatures in Global and National Commerce Act (15
1533 U.S.C. Section 7002) and supersede, modify, and limit the
1534 requirements of the Electronic Signatures in Global and National
1535 Commerce Act.

1536 Section 1103. SEVERABILITY CLAUSE. If any provision of
1537 this chapter or its application to any person or circumstances is
1538 held invalid, the invalidity does not affect other provisions or
1539 applications of this chapter which can be given effect without the
1540 invalid provision or application, and to this end the provisions of
1541 this chapter are severable.

1542 Section 1104. RESERVED.

1543 Section 1105. RESERVED.

1544 Section 1106. APPLICATION TO EXISTING RELATION-
1545 SHIPS.

1546 (a) Except as otherwise provided in this chapter, on the effec-
1547 tive date of this chapter:

1548 (1) this chapter applies to all trusts created before, on, or after
1549 its effective date;

1550 (2) this chapter applies to all judicial proceedings concerning
1551 trusts commenced on or after its effective date;

1552 (3) this chapter applies to judicial proceedings concerning
1553 trusts commenced before its effective date unless the court finds
1554 that application of a particular provision of this chapter would
1555 substantially interfere with the effective conduct of the judicial
1556 proceedings or prejudice the rights of the parties, in which case
1557 the particular provision of this chapter does not apply and the
1558 superseded law applies;

1559 (4) any rule of construction or presumption provided in this
1560 chapter applies to trust instruments executed before the effective
1561 date of the chapter unless there is a clear indication of a contrary
1562 intent in the terms of the trust; and

1563 (5) an act done before the effective date of the chapter is not
1564 affected by this chapter.

1565 (b) If a right is acquired, extinguished, or barred upon the expi-
1566 ration of a prescribed period that has commenced to run under any
1567 other statute before the effective date of the chapter, that statute
1568 continues to apply to the right even if it has been repealed or
1569 superseded.

1 SECTION 2. Chapter 203E of the General Laws is hereby
2 renamed “Trusts — Special Provisions”.

1 SECTION 3. Section 1 of said chapter 203E is hereby repealed.

1 SECTION 4. Section 4 of said chapter 203E is hereby repealed.

1 SECTION 5. Section 5 of said chapter 203E is hereby repealed.

1 SECTION 6. Section 6 of said chapter 203E is hereby repealed.

1 SECTION 7. Section 7 of said chapter 203E is hereby repealed.

1 SECTION 8. Section 8 of said chapter 203E is hereby repealed.

1 SECTION 9. Section 9 of said chapter 203E is hereby repealed.

1 SECTION 10. Section 10 of said chapter 203E is hereby
2 repealed.

1 SECTION 11. Section 11 of said chapter 203E is hereby
2 repealed.

1 SECTION 12. Section 12 of said chapter 203E is hereby
2 repealed.

1 SECTION 13. Section 13 of said chapter 203E is hereby
2 repealed.

1 SECTION 14. Section 14 of said chapter 203E is hereby
2 repealed.

1 SECTION 15. Section 14A of said chapter 203E is hereby
2 repealed.

1 SECTION 16. Section 16 of said chapter 203E is hereby
2 repealed.

1 SECTION 17. Section 17 of said chapter 203E is hereby
2 repealed.

1 SECTION 18. Section 19 of said chapter 203E is hereby
2 repealed.

1 SECTION 19. Section 20 of said chapter 203E is hereby
2 repealed.

1 SECTION 20. Section 21A of said chapter 203E is hereby
2 repealed.

1 SECTION 21. Section 21B of said chapter 203E is hereby
2 repealed.

1 SECTION 22. Section 22 of said chapter 203E is hereby
2 repealed.

1 SECTION 23. Section 23 of said chapter 203E is hereby
2 repealed.

1 SECTION 24. Section 24 of said chapter 203E is hereby
2 repealed.

1 SECTION 25. Section 25 of said chapter 203E is hereby
2 repealed.

3 Summary of the Uniform Trust Code:

4 The proposed legislation comprises the Uniform Trust Code
5 recommended for adoption by the states by the National Confer-
6 ence of Commissioners on Uniform State Law. The legislation
7 would revise and further codify Massachusetts trust law. It would
8 replace the current statutory trust law scheme as appearing in
9 Chapter 203 of the General Laws, although some of the provisions
10 of that chapter would be maintained in a new Chapter 203E.

11 The Uniform Trust Code contains a set of basic default rules
12 that fairly, consistently and clearly govern voluntary trusts. It is a
13 default statute for the most part, because the terms of a trust
14 instrument will govern even if inconsistent with the statutory
15 rules. Rather than significantly changing trust law, the Uniform

16 Trust Code is for the most part a codification of already existing
17 law. Some significant changes include the possibility of virtual
18 representation (where a person can be represented by another indi-
19 vidual with substantially identical interests), the legitimization of
20 honorary trusts, and the possibility of delegation of trustee respon-
21 sibilities.